IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 76 OF 2007

Shri Baburao Ramchandra Palve. ... Applicant.

V/s.

State of Maharashtra
and others. ... Respondents.

Mr.Sachin U. Dhakephalkar i/b. Ajay S. Patil
for the applicant.

Rajesh More, APP for respondent No.1- State.

V.V.Purwant for respondent Nos.2 and 3.

CORAM: V.C.DAGA, J.

DATED: 30th August 2007.

P.C.:

. Heard learned counsel for the applicant, learned counsel for respondent Nos.2 and 3 and leaned A.P.P. for the State.

2. This revision application is directed against the order dated 24th August, 2006 passed below Exh.52 in Sessions Case No.280/2003 whereby the application moved by the applicant to join three police officers, viz., Kale, Thonge Patil and Zampale and other four accused, viz., Kondiba, Vishwanath, Sugalabai and Kamalabai as accused came to be rejected.

3. So far as respondent Nos.7 to 9, the police officers are concerned, the present revision application was not pressed against them. With the result, their names came to be deleted as per the order of this Court dated 29th March, 2007. However, when the case was considered by the District and Sessions Judge, the case of the police officers was also considered. Therefore, the para relevant to the consideration of submissions advanced by the rival parties and reasons recorded by the District and Sessions Judge in the impugned order makes reference to the police officers.

4. Having heard learned counsel for the parties, in my opinion, the view taken by the Court below is a reasonable and possible view. The observations made by the Court below while rejecting the application read as under:

> "In order to appreciate submissions of learned Counsel appearing for parties I perused papers on record carefully. Admittedly there is long standing enmity between family of PW-5 Baburao and accused no.1 Ashok Palve. Therefore, from the material on record it appears to me that PW-5 Baburao is trying to involve all the family members of accused No.1 Ashok in this crime and therefore he filed his complaint against proposed accused to the higher Police Officers but he himself not supported his report Exh.38 when his statement dated 9/7/2003 recorded by PI Thonge-Patil. So uncorroborated testimony (Exh.16) of PW-5 Baburao in my view is not sufficient to add proposed accused in this case and try them together with accused nos.1 to 4 in this

> trial. Moreover, proposed Police Officers cannot be tried together with the accused Nos.1 to 4 for offence punishable under Section 302 r.w. Section 34 of IPC as even PW-5 Baburao has not alleged against them that they have participated in committing murder of deceased Ramchandra Palve. Hence it is clear that the provisions of Section 319 of Cr.P.C. are not attracted against police officers. So also there is nothing on record to show that proposed accused Police Officers prepared any false record. In the circumstances, it is difficult to accept Exh.52 and submissions of learned APP Shri J.S.Pardeshi that there is prima facie evidence against proposed accused for adding them as accused as per the provisions of Section 319 of Cr.P.C. In the circumstances, I find that there is no prima facie evidence against proposed accused for invoking provisions of Section 319 of Cr.P.C. In the circumstances, I find that there is no prima facie evidence against proposed accused for invoking provisions of Section 319 of Cr.P.C. against them. Therefore, I answer Point No.1 in the negative and pass the following order.

5. The Court below was perfectly justified in not allowing the proposed respondents to be made as accused, that too, on the basis of evidence of the present applicant, who has a long standing enmity with the family of accused No.1. By no stretch of imagination, the impugned order can be said to be perverse. The view taken by the Court below is a reasonable and possible view. In the result, revision application is rejected in limine.

JUDGE